



Ray Martinez III
Commissioner
U.S. Election Assistance Commission
Address to Texas Election Officials
July 20, 2005
Austin, Texas

Thank you, Ann, for your very kind introduction. It is a great pleasure for me to be in Austin today and I'm honored to have received this invitation to be back with all of you this year after having spoken at this similar event last summer. Let me also say a word of thanks to Secretary of State Roger Williams, whom I had a chance to visit with during a recent trip to Austin. I know that Secretary Williams has placed a great deal of emphasis in the early part of his term on working with county governments to comply with the requirements of the "Help America Vote Act" and I am very appreciative of his leadership.

Of course, as leaders in either the public or private sector, I'm sure Secretary Williams would agree that we are only as good as the people who surround us. And Texas is certainly no exception with a very strong team here at the Texas Secretary of State's office led by Ann McGeehan, the director of the Elections Division. Ann has been invited by the EAC next week to testify at our public hearing in California regarding the proposed voluntary voting system guidelines, which I will speak more about in the next few minutes. Ann, thank you for your service and continued leadership to the State of Texas in the area of election administration.

I know that all of you in this room today, as county clerks and election administrators, are on the front lines of an effort to continually improve upon what you already do quite well

– and that is the way we administer our elections. I’m humbled at having the opportunity to speak to you for a few minutes today, answer your questions, and to work alongside with you in this historic effort.

I am particularly pleased to be here today to discuss the progress we have made at the U.S. Election Assistance Commission over the past 19 months. As most of you probably know, the EAC is a new Federal agency and, in many ways, we are working hard to find our footing in the landscape of election administration. Hopefully, in the next 30 minutes or so, I will share with you some useful information that will give you a sense of the challenges that lie ahead for us at the EAC, as well as the priorities we have set which will have relevance to you, as local officials and election administrators.

Let me start this afternoon with just a few personal reflections on my road to the U.S. Election Assistance Commission, and the role and mission of this new Federal agency.

Because the EAC is such a new – and relatively obscure – Federal agency, it certainly would not surprise me if many of you are just now learning of our existence for the first time today. So, let me begin my remarks this morning by giving you a little bit more background about myself. In doing so, my hope is that you will gain some insight as to the personal and professional influences that I bring to the table which shape my decisions each day as one of four commissioners at the EAC.

As Ann already knows, prior to my appointment to this Commission back in December of 2003, I had worked extensively in both state and Federal government positions. One of my previous Federal government appointments – that of regional director for the U.S. Department of Health and Human Services in Dallas – is, for me, the job that stands out as having given me the unique opportunity, perhaps the first time in my professional career, to work outside what I have referred to as the “policy bubble” that we all seem to live in back in Washington, D.C.

In other words, as regional director, I had the opportunity to see first hand how health policy created in Washington, D.C., gets implemented in places like Texarkana, Texas; Tulsa, Oklahoma; or Austin, Texas. As regional director, I had the opportunity to work with both statewide elected officials, as well as local county commissioners – all of whom had various ideas about how, for example, we could better utilize scarce federal Medicaid dollars at the state and local level. In short, as regional director, I came to appreciate the direct connection between government policy, and the transformation of that policy into essential services for real people. And, after serving as regional director, I made the decision that from that point forward, my professional career would involve developing and/or implementing public policy always from the perspective of this grassroots view – in other words, “How does this work in the real world?”

After serving as regional director in Dallas and a short stint back on the White House staff, in the summer of 2000 my wife and I returned to our home state of Texas and I joined a mid-size law firm in Austin; a couple of years after that, I started my own solo law practice, also here in Austin. But, on both occasions, my law practice was devoted almost exclusively to representation of county governments on issues dealing with administrative law and government affairs. In this position, as an advocate for county governments, I quickly came to appreciate not only the challenges of implementing public policy from a local perspective, but also of the often difficult decisions in prioritizing scarce local tax dollars toward essential government services.

I vividly remember one of my former clients – a county judge in a fast-growing mid-size county in Texas with rapidly changing demographics – who told me shortly after he learned of my appointment to this Commission, how his commissioners court had agonized for years over whether to purchase new voting systems for his county, or dedicate limited local tax dollars to other essential services, such as EMS and fire protection.

Clearly, as local officials and election administrators, you have had to bear the brunt of these critical and difficult decisions. And yet, you are the public servants who work all

year long to make sure that voter registrations get processed, elections are planned, and that all sorts of civic and community-based groups are able to get access to the voting information they need. As local officials and election administrators, you are also the public servants who get up every morning and go to bed every night committed to the proposition that every eligible American citizen has the right to cast a ballot and to have that ballot counted. For that, you have my deepest gratitude and respect.

I'm currently reading a book called "Collapse" written by a professor of geography at the University of California named Jared Diamond. (Some of you may know Professor's Diamond's previous book called "Guns, Germs and Steel.") In "Collapse," Professor Diamond examines in great detail why certain societies throughout human history have failed – like the ancient Maya civilization that collapsed over a thousand years ago in Mexico – and why other societies have continued to endure, despite tremendous challenges, most of them environmental, such as the people of Japan and New Guinea.

One of the many conclusions reached by Professor Diamond is that a common characteristic of those societies that have succeeded is what he terms a "bottom up" style of decision-making. That is, throughout the course of human history, those civilizations that have been able to overcome changing conditions and have adapted best are societies in which its citizenry are actively engaged in meeting the challenges that are posed and in crafting solutions that inevitably require patience, persistence and determination.

Professor Diamond's message of "bottom up" decision-making resonates quite well in our country's great history. America has endured – and will continue to do so – because we value self-governance and the critical role that is played in developing policy and innovation at the state and local level. While Professor Diamond's book shows that societies governed from the "top down" can also be successful, our country's history has placed great emphasis upon decision-making at the local level. And it is that very same idea that is carried over into my agency's governing Federal statute – the Help America Vote Act of 2002.

So, let me spend the next few minutes talking about HAVA and the specific work of the Election Assistance Commission.

To say that the issues and problems in election administration that were put under the spotlight during the 2000 presidential election were significant is perhaps an understatement. What happened back in November of 2000 (and even, to a smaller extent, in November 2004) has spurred not just one, but now two national, independent election reform commissions, not to mention all sorts of additional retreats, discussions and initiatives aimed at finding solutions.

As most of you probably know, the Help America Vote Act of 2002 was passed by Congress and signed into law by President Bush to help address these problems and to improve upon the way we conduct elections for Federal office. In my view, HAVA was not intended as a short-term fix but rather, represents a comprehensive, yet balanced approach to election reform. HAVA focuses not only on voter access, but equally on deterring fraud. Importantly, HAVA recognizes the historic role played by State and local governments in the administration of elections – and largely leaves decisions on how to implement the administrative requirements in the law to the discretion of State and local jurisdictions. And yet, HAVA also represents a strong consensus on the part of the United States Congress that, at a minimum, there are certain policies and procedures in election administration that, when implemented, will improve upon the process – things such as provisional voting; statewide voter registration databases; and certain mandated standards for voting technology.

Perhaps most importantly, HAVA represents an unprecedented effort by the Federal government to help bear the cost of administering elections for Federal office. Some, including myself, have described the administration of elections for Federal office as perhaps the longest running unfunded mandate in the history of our great country! While \$3.2 billion will not alleviate all of the costs of implementing this important new Federal law, nevertheless, this money represents a significant investment by the Federal

government in assisting State and local governments to meet the HAVA administrative requirements, particularly those involved in the purchasing of new voting systems.

As for my Agency's role in the implementation of HAVA, I will simply repeat what I stated during my Senate confirmation hearing back in October of 2003: Our obligation at the EAC is to work in full partnership with State and local governments to implement this important new Federal law. By "full partnership," I mean that the EAC must distribute Federal funds in a timely manner; by "full partnership," I mean that the EAC must develop reasonable, consistent and timely implementation guidance with respect to the various administrative requirements in the law, such as statewide voter registration databases; and, by "full partnership," I mean that the EAC must ensure that objective, repeatable standards are developed by which we will judge, at a national level, the integrity and fairness of our voting systems in this country. And, we must do all of these things not in a "policy bubble," but in collaboration with all of you and with the transparency that is demanded by the general public and the advocacy community. We are trying our best to do just that.

Specifically, our implementation efforts are focused exclusively on developing mandated guidance for the administrative requirements in HAVA, as well as developing updated voting system guidelines through an oversight body called the "Technical Guidelines Development Committee." So, let me spend just a few minutes on each of those issues.

First, as you all know, HAVA requires that no later than January 1, 2006, nearly every State in the country must have in place computerized, statewide voter registration lists that are defined, maintained and administered by the State's chief election official. Texas is certainly doing its part to meet this important requirement.

Throughout the past several months, both the EAC and the Department of Justice have received numerous inquiries regarding matters of interpretation with regard to implementing statewide voter registration lists. For example, we have been asked repeatedly for an explanation of how frequently voter registration information received

by a local jurisdiction must be uploaded to the centralized, statewide list in States that don't have a real time system. Although HAVA requires that the EAC issue guidance on how to implement these statewide voter registration lists, we decided early on that such guidance must be developed in coordination with state and local election administrators. Back in April of 2005, we convened a small working group comprised of 15 or so election administrators from throughout the country, and met with this group for two days to discuss the various issues surrounding implementation of these statewide systems.

The challenge for the EAC in this area is a rather obvious one; that is, not every State is starting from the same place with regard to implementing these systems. According to electionline.org, at least 17 States have already implemented a statewide voter registration system (most having done so prior to HAVA's passage). Thus, while we don't want to develop guidance that in any way hinders the efforts of those States that have implemented a statewide list, we still have 30 or so States that are looking for guidance as they develop their own systems. And, the EAC needs to be responsive.

Thus, with the help of this small working group, the EAC recently developed and released draft guidance which addresses several of the concerns that have been raised both to the EAC and DOJ regarding these systems. Next week in Cambridge, MA, the EAC will hold a public hearing where we will receive testimony from many of your colleagues from around the country regarding this draft guidance. Our hope is to adopt this guidance, in final form, no later than June 1st and to release it soon thereafter. I urge all of you to visit our agency's website at www.eac.gov to review this draft guidance and submit your comments.

Another important area for the EAC involves the development of ***voluntary voting system standards***, or what are now called "guidelines" under HAVA, which we recently released in draft form just a few weeks ago. In short, these guidelines address issues involving technical requirements for voting system performance. For example, the initial set of voting system guidelines cover issues such as software distribution and set-up validation procedures for DRE systems and guidelines for voter verified paper audit trail

(VVPAT) for use by jurisdictions that have voluntarily imposed such verification procedures. Additionally, the draft voting system guidelines that we just released also provide information regarding voting system accessibility for person with physical disabilities.

While this speech is not the place to go into too much detail regarding these proposed guidelines, suffice it to say that I believe the release and work on the proposed guidelines is perhaps the most significant project undertaken by the EAC because it speaks to the very heart of what is a growing concern among our fellow citizens: trust in the voting process. A poll released several weeks after this past November's presidential election showed that approximately 1 in 4 voters – some 25 percent – had doubts about the accuracy of the vote count. As election administrators, I know you share my concern that we must do all that we can to turn this voter “confidence meter” back in the right direction. I believe these voluntary voting system guidelines can help to do just that.

Let me also say a quick word about two related initiatives that represent a significant change in the way we judge the integrity and reliability of our voting systems. The first involves the *accreditation of the independent testing laboratories* that certify voting systems at the national level. HAVA mandates that the EAC will now take on the role of accrediting these independent labs for the task of voting system certification. We will do this in partnership with the National Institute of Standards and Technology (NIST), which will provide for the initial screening and testing of these laboratories.

This change, together with the requirement that the EAC also take over the *voting system certification process*, represents a significant responsibility on the part of the EAC, and a significant shift in the way accreditation and certification is currently being conducted. As most of you know, the current process for lab accreditation and voting system certification is through a voluntary process administered by the National Association of State Election Directors (NASSED). While NASSED has done an outstanding job for many years now in all facets of system certification, lab accreditation and the development of voting system standards, HAVA requires that the EAC dedicate personnel and resources

to ensure that this process is administered through coherent and consistent policies, and is done with as much transparency as is reasonably possible. Needless to say, we take this responsibility very seriously.

Finally, allow me to say a few words about a couple of other areas where the EAC has focused staff and resources. Under HAVA, a voter who appears at the polls must be given a ***provisional ballot*** under one of two circumstances: if their name is left off of the voter rolls and they declare themselves as eligible to vote in that Federal election; or, if the voter's eligibility is challenged by an election official. Provisional voting was not a new concept for many States; nevertheless, as you probably know, it turned out to be a painful exercise for many.

Differing interpretations of "jurisdiction" drew national attention and litigation in at least 5 states, and while this may seem like negative and unwanted attention, these lawsuits in the end produced a reasonable and workable rule of law regarding provisional voting: that is, generally speaking, a voter is allowed to cast a provisional ballot, but States determine how and whether that ballot will be counted. In all, at least 1.9 million voters nationwide cast provisional ballots last November, with some 1.2 million or so of those ballots having been counted.

Another EAC priority is our ***Election Day survey***. Gathering data from the first Federal general election after passage of HAVA was a critical effort to establish a baseline of data that can be used to evaluate election administration procedures and technology. Importantly, gathering this type of data allows the EAC to fulfill its important work as a national clearinghouse of information, and to produce reports and recommendations – such as "best practices" – that can serve state and local election administrators.

All of the updates and priorities I've just mentioned are but a select few of the many duties that our 22 person agency is tasked by HAVA with performing. I believe the work that we are doing at the EAC is critical in assisting State and local governments to

improve upon the process of election administration, and I strongly believe in the EAC's mission. However, there remains an ongoing debate among many in the election community about whether a Federal agency like the EAC should exist at all. This, I believe, is a legitimate question.

From my perspective, let me simply emphasize once again that the Help America Vote Act, in my view, was never intended to supersede the traditional role of State and local governments administering our elections, nor was HAVA a scheme to create a new Federal agency that, over time, would aggregate power through creeping encroachment. HAVA takes great pains to ensure that the Election Assistance Commission will not have binding rulemaking authority when it comes to the administrative requirements, such as provisional voting. Even in those areas where the EAC is required to provide guidance to assist States in implementing these various administrative requirements, HAVA is clear in giving State and local governments final say in determining the method of compliance. This is, in my view, the appropriate role for such a Federal agency – a reasonable yet limited role which focuses on assisting State and local governments to implement HAVA, and not on creating new obligations or mandates.

And yet, while I have great respect for the traditional role played by State and local governments in administering our elections, there are, in my view, a few compelling developments over the recent history of our country that require the existence of an Election Assistance Commission at the Federal level.

First, our society is certainly *more mobile* than it ever has been before. During the 1950's and 60's, the vast majority of Americans lived within 50 miles of their childhood home. However, today, that trend has been reversed – individuals move frequently, both interstate and intrastate moves.¹ The impact of a more mobile society on the voting process can be significant: poll workers no longer know most or even some of the voters who come into their polling location, and the voters themselves often do not have great familiarity with their assigned polling place.

¹ Source: National Association of Home Builders

Second, the ethnic and racial demographics of our great country are today more diverse than ever before. Research shows that many first and second generation Americans take their role of citizenship very seriously, and vote in higher numbers. However, these citizens also bring unique challenges to the voting process, such as the need for assistance in alternative languages in order to understand and cast their ballots. This growing diversity – the very strength of our Nation – adds challenges to the process.

Finally, in addition to more mobility and diversity in our country, the fact is that as we impose more legislative mandates and administrative requirements – and, as voting technology becomes more high tech – the administration of elections has simply become inherently more complex. It's no wonder that poll workers and election officials across the country are struggling to interpret state and Federal mandates, when lawyers like myself can't seem to understand them either. And all of this added complexity also impacts the voter, who normally doesn't focus on the technology or the rules we use to administer our elections, except on Election Day.

In short, for all of the reasons I mentioned above, and others I don't have time to get into today, I believe the EAC has an appropriate place at the election administration table. I know that your job gets more and more complicated with every election cycle – many of my dear friends in this room remind me of that every time we get together. And our job at the EAC is to help, in the most reasonable way possible and always keeping in mind that “bottom up” decision-making has proven to be the most enduring and sustainable. It is a lesson that I will not soon forget, especially after my years of service to county governments.

Finally, let me end my remarks this afternoon with one more personal reflection which directly touches upon why I was interested in serving on the EAC.

Back in March of 2003, when I first decided to accept an appointment to this Commission, I sat down with my parents down in the small town of Alice, Texas to tell

them that, at some point after a Senate confirmation process, my wife and I would be moving the family back to D.C. for the next four years so that I could serve on this brand new Federal agency.

My parents are both retired – my Father, who is 84, is a retired auto mechanic and oil field worker and my mother is 77 – and I remember my Mother telling me during that conversation that while she was sad that our family would be moving so far away, she was also happy that I would be on this particular Commission because, as she explained, having never used a computer before in her life, she would not know what to do if one of these fancy new machines were installed in the voting booths of Jim Wells County, Texas, where she and my Father have been voting for as long as I can remember. She said to me in very plain language: someone has got to show me what to do if that happens, otherwise, I may not be able to vote anymore.

Well, there is no truer way to stay connected to how policy impacts real people than to have your own Mother set the standard for what success means. As important as HAVA is to upgrading election technology and improving our election processes, we have to remember that ultimately, election administration is all about people – the people who run for office, the people who administer our elections, the people who work the polls so diligently, and ultimately, the people like my Mother, who come to cast a ballot and in doing so, fulfill their most important obligation as an American citizen.

And so, as an EAC Commissioner, I want to serve as your partner and advocate in fulfilling these important responsibilities. The EAC stands ready to continue this important work, and to do so in the spirit of friendship and collaboration with all of you.

Thank you for all that you do, and thanks again for inviting me here today.

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